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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,256	06/15/2000	Yoshinori Kumasaka	SHC0012	8977

7590

08/12/2004

Baker & Daniels
Suite 800
111 East Wayne Street
Fort Wayne, IN 46802

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/595,256

Applicant(s)

KUMASAKA, YOSHINORI

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-2-04 has been entered.

Drawings

2. The drawings were received on 7-2-04. These drawings are approved by the Examiner and the Draftsman.

Claim Language Interpretation

3. Since a specific definition of the claim terminology "a major portion" has not been specifically defined, the usual or common, i.e. dictionary, definition, will be used, i.e. "Of a greater number, quantity or extent", i.e. more than 50%. It is also noted that lines 13-20 of claim 1 do not require the covering zone to have a terminal edge or require the elastic zone to be a discrete element, i.e. nonmonolithically formed, from the end at which the topsheet and backsheet are superimposed, e.g., a location where either the topsheet and or backsheet is no longer superimposed by the other could defined the elastic zone.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al '547.

See Figures, especially Figures 2-6, the Claim Language Interpretation section supra, col. 1, line 65-col. 2, line 27, col. 4, lines 7-15 and 37-60, col. 5, line 1-col. 6, line 20, col. 30, line 8-col. 31, line 21, col. 31, line 59-col. 36, line 12.

Claims 1-3: the front waist region is 24, the rear waist region is 26, the crotch region is 28, the waist opening is 30, the leg openings are 32, the top sheet is 48 of one or more layers and the backsheet is 46 of one or more layers, e.g. 50, 52, the covering zone is at least a portion of 24 and 26 except for the elastic zone, the longitudinal end of the covering zone is 36 including edge portion thereof 58, see col. 4, lines 55-60 again, the elastic zone is 60, the first member, 66 or 140, and second member, 62 or 132, as claimed on lines 20-27 of claim 1, claim 2 and claim 3 are disclosed explicitly in the cited portions supra. With regard to lines 27 et seq of claim 1, as interpreted in light of the paragraph bridging pages 5-6 of the instant specification, the gathers are formed along the entire length when the second member is attached because the second member has gathers and extends along the entire length. The specification discloses that the length of the elastic zone is the same as that of the combined first and second members in the uncontracted state of the first member. The second member portion of '256 has gathers along the length thereof due to its being a composite elastic material, see portions of reference cited which teach the composition of the first and second members of the elastic zone, and the entire

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length of at least one of the waist regions will have gathers due to the attachment of the gathered second member to the upper edge of the covering zone. In the embodiment where there is a recoverable first member, gathering will also be formed due to recovery thereof. It is noted that the gathers in claim 1 and those in claim 3 are deemed to be the same. Finally, more than 50% or a major portion of the elastic zone width 60 extends beyond end 58, see, e.g., Figures 2 and 3.

Claims 4-6: It is noted that the covering area as claimed still does not need to encompass the entire circumferential direction of said at least one of said front and rear waist regions. It is also noted that the length in claim 4 is not required to be the initial length as is recited in claim 3. See again Figures 2-6, col. 5, line 41-col. 6, line 20, col. 30, line 8-col. 31, line 21col. 33, lines 33-39, col. 35, lines 47-65, i.e. the second member is of inelastically stretchable material, the covering zone is nonstretchable because the components thereof are nonstretchable. With regard to claim 6, at the very least, the covering zone along edge 58 will be stretchable due to the gathering by elastic 140 which can be applied in the tensioned state or recover latent tension adjacent edge 58. The stress stretch in a portion of the covering zone extending along the elastic zone, i.e. including edge 58, and of the same width as the elastic zone is higher than that of the elastic zone when stretched by 3-20 % since the covering zone portion is more inelastic due to increased amount of material therein and the greater distance thereof from the elastic 140 as compared to the amount of material therein and distance thereof from the elastic of the elastic zone, see, e.g., col. 4, line 7-15, i.e. since the covering zone portion is more inelastic the stretch stress thereof will necessarily be higher than that of the elastic zone which is more elastic.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al '547 in view of K-C '550 and Daniels '646.

Applicant claims structure similar to that provided in the waist being provided around each of the leg openings. Kato et al is silent as to the structure of the leg openings. However it is clear from the disclosure thereof that the opening for the legs would be subject to the same problems as the opening for the waist, i.e. lack of comfortable fit over a wide range of sizes and ease of use over an extended period of use. However, it is well known in the absorbent article art as illustrated, for example, by K-C '550 and Daniels that structure similar to that used in the elastic waist system of an absorbent article is also used in the leg opening areas of the article to provide similar benefits and improvements, see Figure 8 and page 7, lines 6-9 of K-C '550 and Figures , col. 1, lines 66-68 and claims 2 and 4 of Daniels. Therefore to provide an elastic system similar to that at the waist of Kato et al also around each of the leg hole of the Kato et al device would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would provide similar benefits thereto, i.e. contribute to the comfort of the fit and ease of use, as is well known in the art as illustrated by K-C '550 and Daniels, and the desire of such by Kato et al.

Response to Arguments

8. Applicant's remarks with respect to the informalities have been noted but are either deemed moot in that the issue has not been reraised or deemed not persuasive for the reasons discussed supra. Applicant's remarks with regard to the prior art have been considered but are deemed moot in that the 102 rejection based on the '550 reference not been reraised.

Conclusion

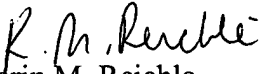
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited teaches various elastic zones.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
August 4, 2004